

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Updates on Municipal Tax Fairness Model Ordinance and potential Bellevue tax code amendments.

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POLICY ISSUES

The City has historically sought to make compliance with Business and Occupation tax obligations as simple as possible for businesses located in and doing business in Bellevue. To this end staff have adopted relevant portions of the Municipal Tax Fairness Model Ordinance (Model Ordinance), participated in the Multi-City Tax Portal Project to develop a one-stop online tool for businesses to register and pay local B&O tax, and are continuously evaluating the City's tax code for opportunities to streamline tax filing requirements.

The following principles guide staff efforts:

- To maintain a taxpayer-friendly environment at the City of Bellevue that is sensitive to the needs of our resident businesses and competitive in the local environment;
- To simplify Bellevue tax code in order to make compliance with Bellevue tax law easier;
- To simplify the administration of the City's tax to minimize costs associated with tax administration; and
- To gain consistency with other taxing jurisdictions where possible.

Tax code amendments necessary to adopt mandatory changes to the Model Ordinance must be effective January 1, 2013. Staff prefers to adopt the optional code changes to clarify and streamline tax compliance effective at the beginning of the year for ease of implementation.

FISCALNOTES

As of December 31, 2011 Bellevue had approximately 35,000 businesses licensed to do business in Bellevue. Only those taxpayers with annual taxable gross receipts in excess of \$150,000, or greater than 250 taxable square feet pay the Bellevue B&O tax. In 2011 approximately 18% of those with active Bellevue business licenses paid B&O tax. The B&O tax generated approximately \$24.5 million during the 2011 calendar year.

DIRECTION NEEDED FROM COUNCIL

☒ Action
☒ Discussion
☐ Information

Staff are proceeding to prepare draft ordinance language on mandatory changes to the Model B&O Ordinance for Council consideration on December 3. Tonight staff will be seeking Council direction on on proposed changes to the City's tax code to clarify and simplify tax filing and administration for those doing business in Bellevue through:

- Administrative changes to ensure clarity for taxpayer;
- Square Footage tax code changes to simplify reporting requirements.

BACKGROUND/ANALYSIS

On September 24, staff updated Council on regional simplification efforts related to B&O tax, including mandatory changes to the Model B&O Ordinance that must be adopted with an effective date of January 1, 2013, and the progress on the Multi-City Tax Portal. Additionally, staff proposed to update the Bellevue City tax code to simplify tax reporting for Bellevue's taxpayers through minor administrative code changes and by studying the simplification of Bellevue's Square Footage Tax with input from the business community.

Council directed staff to engage the business community, through the Bellevue Chamber of Commerce and the Bellevue Downtown Association, to explore opportunities to clarify and simplify reporting for taxpayers; and return to Council in November with an update.

The purpose of tonight's discussion is to update the Council on the Department's efforts and seek Council's feedback on potential code changes designed to improve clarity and to make filing and paying taxes to Bellevue as simple as possible. Staff proposes presenting the finalized code changes to Council for adoption on the December 3, 2012 Consent Agenda and is seeking guidance from Council on whether to continue additional simplification efforts by studying a more significant change to the Square Footage Tax. Details on the proposed code changes are provided in attachment A.

Stakeholder Process

The Finance Department worked with the Bellevue Chamber of Commerce and the Bellevue Downtown Association to determine the best way to seek stakeholder feedback on simplification efforts. Both organizations agreed that a joint meeting with interested members would result in the best level of participation. Each organization worked with the City to invite their membership to attend a stakeholder meeting on October 30 at City Hall. The meeting was well attended by Bellevue's largest resident businesses and a few practitioners representing clients in Bellevue.

Stakeholder Meeting Agenda

The Stakeholder Meeting Agenda included two items: an update on the Multi-City Tax Portal project and a discussion of proposed changes to simplify the Square Footage Tax calculation. Both topics are the result of the City's ongoing efforts to make filing and paying taxes to the City as simple as possible.

The presentation on the Multi City Tax Portal included background on the project and an update on the status of the project. The City also encouraged stakeholders to provide feedback on the project. The presentation on the Square Footage Tax included background on the Square Footage Tax and a conversation about possible changes to simplify the Square Footage Tax calculation.

The search for opportunities to simplify the Square Footage Tax calculation was limited by the desire to implement a solution that would not have a significant impact on City revenues or the amount of tax that individual taxpayers, or groups of taxpayers, pay to the City. Being mindful of the preceding, the following opportunities were presented for discussion at the Stakeholder Meeting:

- Simplifying the mechanics of the calculation. The current calculation has four parts; however, Bellevue City Code indicates only two components to the calculation of taxable square footage: 'net rentable area' and an exemption. Aligning the mechanics of the calculation with the code was identified as an opportunity to simplify the calculation.
- Interpreting code language on the tax form. The current square footage tax form simply transfers the language from the tax code to the form. Interpreting the language from the tax code, rather than transferring it, was identified as an opportunity to add clarity to the calculation.
- Simplifying the data required to perform the calculation of taxable square footage. Currently, calculating the exemption from the Square Footage Tax requires taxpayers to identify data not used for another reporting purpose. Discontinuing the use of data not used for another reporting purpose in favor of capturing data already used in taxpayer reporting was identified as an opportunity to simplify the calculation.

Following the meeting, staff proceeded to draft a code amendment and a revised Square Footage Tax form that would simplify reporting for taxpayers and not significantly impact the amount of tax that individual taxpayers pay to the City. These documents, along with the slides from the Stakeholder Meeting presentation, were posted on the City's website. Stakeholder Meeting attendees and the public were notified that the documents were available for review and comment. The above-referenced documents were hosted on the City's website for a 10 day comment period.

Stakeholder Feedback

The following feedback was received from the Stakeholder group during the stakeholder process:

- Agreement with the Tax Office regarding the areas within the Square Footage Tax calculation that have been identified as problematic; and
- Agreement that the proposed changes would have some beneficial impact on simplifying Square Footage Tax reporting.

Additionally, during the feedback process staff became aware that changes necessary to dramatically simplify the Square Footage Tax calculation, and clarify the City's code, were likely to have a significant impact on the amount of Square Footage Tax that individual taxpayers or groups of taxpayers would pay to the City. Previously staff sought direction from Council to simplify Square Footage Tax reporting utilizing solutions that would have limited impact on the amount of square footage tax that the City collects or that individual taxpayers might pay. As such, further analysis and discussion of potential solutions was postponed until staff had an opportunity to confirm Council's agreement with the evaluation of these options.

Stakeholders made additional requests for the following at the meeting:

- More frequent communication from the Tax Office regarding tax matters;
- More transparency regarding multi-city efforts for coordination and simplification; and
- To post the presentation and meeting materials on the City's website would be a way to engage those who were unable to attend the meeting in the process.

In response to Taxpayer feedback and to facilitate communication between the City's Tax Office and stakeholders, staff created a Bellevue tax list-serve to provide email alerts to Bellevue's B&O tax stakeholders. With the help of the BDA and the Chamber, the City has signed up 149 stakeholders to receive Bellevue tax alerts and an alert was distributed to notify stakeholders that the above referenced documents were available on the website for review and comment. The Tax Office will use tax alerts to provide a means to more frequently communicate with stakeholders. Additionally, Bellevue will work with the Multi-City Tax Portal team to identify opportunities to increase transparency related to their work.

Mandatory Model Ordinance Revisions

Effective January 1, 2008, Bellevue adopted the Model Ordinance. The Model Ordinance may not be updated more frequently than every four years except to reflect changes in state law. Recently, representatives from a number of cities, including Bellevue, and the Association of Washington Cities (collectively referred to as the 'Workgroup') gathered to discuss whether an update to the Model Ordinance was appropriate.

Several possible candidates for update were identified at that meeting. The following is a list of the proposed changes, all of which reflect alignment with the State of Washington:

- Digital products and digital goods, definitions and sourcing;
- Board of director licensing and tax;
- Repeal of 'Super Nexus' provision;
- Insurance business preemption; and
- Confidentiality.

The Workgroup agrees that alignment in these areas is appropriate and has drafted proposed changes to the Model Ordinance in consultation with the business community. Cities must adopt the mandatory changes with an effective date of January 1, 2013. Additional information on the Model Ordinance update is available at <http://www.awcnet.org/LegislativeAdvocacy/Legislativeissues/MunicipalBO.aspx>.

ALTERNATIVES

Council may choose to provide direction to staff tonight or direct staff to return with additional information at a subsequent meeting. Alternatives for Council are:

- (1) Direct staff to proceed with finalizing the proposed tax code changes to clarify and simplify reporting for taxpayers and to study a more comprehensive solution to simplify Square Footage Tax reporting; or
- (2) Direct staff to proceed only with finalizing the proposed tax code changes to clarify and simplify reporting for taxpayers; or
- (3) Direct staff to proceed only to study a more comprehensive solution to simplify Square Footage Tax reporting; or
- (4) Provide alternate direction to staff.

RECOMMENDATION

Alternative 1 - Direct staff to proceed with finalizing the proposed tax code changes to clarify and simplify reporting for taxpayers and to study a more comprehensive solution to simplify Square Footage Tax reporting.

ATTACHMENT(S)

Attachment A - Code Change Detail
Attachment B - Redline Code Change Detail

AVAILABLE IN COUNCIL OFFICE

Redline Model Ordinance Changes Detail (Available in Council Office)

City Council Study Session, November 19, 2012
 Finance Department, Tax Office
 Attachment A, Code Change Detail

<u>Administrative Code Changes</u>				
Code Section	Description of Proposed Change	Desired Result	Tax Impact	Attachment C Page Number
4.03.040(A)	Add verbiage to acknowledge the annual non-reporting frequency.	Gain consistency between the tax code and long standing administrative policy.	None	1
4.09.090(A)	Add verbiage to acknowledge that the threshold amount is calculated based on filing frequency. Consistency with long standing administrative policy, consistency with other jurisdictions.	Gain consistency between the tax code and long standing administrative policy.	None	2
4.09.030(L)(4)	Change verbiage to be consistent with the actual title of the applicable code.	Simplify Bellevue tax code research for taxpayers.	None	1
<u>Square Footage Tax Code Change</u>				
Code Section	Description Change	Desired Result	Tax Impact	Attachment C Page Number
4.09.050(A)(1) , 4.09.100(F).	Edit the code reference to tangible personal property to acknowledge digital goods and intangibles.	Simplify the exemption calculation by using data already used in the reporting.	Minimal	2, 4

Bellevue City Council Study Session, November 19, 2012**Finance Department, Tax Office****Attachment B, Redline Code Change Detail****4.03.040 When due and payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.**

A. Other than any annual license fee or registration fee assessed under this chapter, the taxes imposed by Chapter [4.04](#) BCC, Admission Tax Code; Chapter [4.09](#) BCC, Business and Occupation Tax Code; Chapter [4.10](#) BCC, Utility Occupation Tax Code; and Chapter [4.14](#) BCC, Gambling Tax Code, shall be due and payable in quarterly installments. At the director's discretion, businesses may be assigned to a monthly ~~or~~, annual, ~~or active non-reporter~~ reporting period depending on the tax amount owing or type of tax; provided, however, that the director may only assign a monthly reporting period for purposes of Chapter [4.09](#) BCC where the taxpayer is remitting excise tax to the state on a monthly basis. Tax payments for monthly, quarterly and annual taxpayers are due as described for such reporting frequencies in RCW [82.32.045](#), as it now exists or as it may be amended.

4.09.030 Definitions...

4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license and pay tax:

- a. Meeting with suppliers of goods and services as a customer.
- b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
- c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.
- d. Renting tangible or intangible property as a customer when the property is not used in the city.
- e. Attending, but not participating in a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the city's ~~trade show or multiple vendor event~~ Temporary Special Events ordinances.
- f. Mere delivery of goods via common carrier.
- g. Soliciting sales by phone from a location outside the city.

5. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license; provided, that it engages in no other business activities in the city. Such activities do not include those in subsection (L)(4) of this section.

4.09.090 Exemptions.

A. Tax Exemption Thresholds. Any person engaging in any one or more business activities which are otherwise taxable pursuant to BCC [4.09.050](#)(B), whose value of products, gross proceeds of sale, or gross income of business, less applicable deductions and exemptions, is less than or equal to \$125,000 for an annual reporting period, regardless of assigned reporting frequency, shall be exempt from taxation under such section. **The annual exemption amount may be divided by the assigned filing frequency and applied to each return due and payable during the year. It is the taxpayer's responsibility to reconcile the exemption taken during the year to the allowable annual deduction. The administrative provisions in BCC 4.03.90 and 4.03.100 apply to any underpayment or overpayment of tax resulting from such reconciliation.** In addition, any person whose net taxable income plus receipts from tangible personal property delivered outside the state is less than or equal to \$125,000 shall be exempt from taxation from BCC [4.09.050](#)(A). The exemption level set forth in this subsection shall be administratively adjusted by the director on January 1st of each year, beginning on January 1, 2006, to reflect any change in the cost of living, as defined and calculated pursuant to BCC [4.03.020](#)(B). The amount of the exemption level so calculated shall be rounded to the nearest \$5,000.

4.09.050 Imposition of the tax – Tax or fee levied.

Except as provided in BCC [4.09.090](#)(A), there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the city, whether the person's office or place of business be within or without the city. The tax shall be in amounts to be determined by application of rates against the square footage of office space in Bellevue and/or gross proceeds of sale, gross income of business, or value of products, including byproducts, as the case may be, as follows:

A. Square Footage Tax. Upon every person within this city who maintains an office(s) or facility(s), the amount of tax shall be equal to \$0.1834 for each quarterly period of a calendar year for each square foot of floor area of office space calculated to the nearest square foot. The tax rate set forth herein shall be administratively adjusted on January 1st of each year, beginning January 1, 2004, by the director, to reflect any change in the cost of living, as defined and calculated pursuant to BCC [4.03.020](#)(B).

1. As to such person who maintains an office or facility that performs or supports an activity for which such person pays gross receipts business and occupation tax under this chapter, an exemption from a portion of the tax of this section is granted. The exemption is calculated by taking the proportion that adjusted gross receipts bears to the total gross receipts of the business location multiplied by the taxable floor area (as defined in subsection (A)(2) of this section), used to perform or support the activity subject to gross receipts business and occupation tax (subsection B of this section).

“Adjusted gross receipts” for the purpose of this subsection shall include total gross receipts of the business location less receipts from ~~tangible personal property~~ sales reportable under the ~~wholesale or retail gross receipts tax classification~~ that are delivered outside the city deductible pursuant to BCC [4.09.100](#)(F) or [4.09.100](#)(N) and not taxed under subsections (B)(1) (extracting tax) or (B)(2) (manufacturing tax) or (B)(5) (printing tax) of this section.

For any person with more than one location in the city, the floor space and receipts from locations within the city shall be combined for the purpose of calculating this exemption.

The director may promulgate rules and regulations regarding the manner, means and method of calculating the exemption.

4.09.100 Deductions.

In computing the tax imposed by this chapter, the following items may be deducted from the measure of tax. The square footage tax levied pursuant to BCC [4.09.050](#)(A) shall not apply unless otherwise noted.

A. Fees, Dues, Charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. Initiation fees;
2. Dues;
3. Contributions;
4. Donations;
5. Tuition fees;
6. Endowment funds; and
7. Charges made for operation of privately operated kindergartens.

This subsection shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this subsection.

B. Compensation from Public Entities for Health or Social Welfare Services – Exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a

health or social welfare organization (as defined in RCW [82.04.431](#)) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, “employee benefit plan” includes the military benefits program authorized in 10 U.S.C. Section 1071 et seq., as amended, or amounts payable pursuant thereto.

C. Interest on Investments or Loans Secured by Mortgages or Deeds of Trust. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

D. Interest on Obligations of the State, Its Political Subdivisions, and Municipal Corporations. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

E. Interest on Loans to Farmers and Ranchers, Producers or Harvesters of Aquatic Products, or Their Cooperatives. In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

F. Receipts from Tangible Personal Property and Retail Services Delivered Outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property or retail services that are delivered by the seller to the buyer or the buyer’s representative at a location outside the state of Washington. The square footage tax pursuant to BCC [4.09.050](#)(A) shall apply to deductions for receipts from ~~tangible personal property~~ sales delivered outside the state.
